

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARONTE TYRONE LEWIS,  
Plaintiff,  
v.  
CONNIE GIPSON, ET. AL.,  
Defendants.

Case No. 1:20-cv-00574-NONE-HBK

ORDER DENYING PLAINTIFF'S MOTIONS  
FOR RECONSIDERATION AND MOTION  
FOR EVIDENTIARY HEARING

(Doc. Nos. 113, 114, 119)

Plaintiff Daronte Tyrone Lewis, a state prisoner, initiated this action proceeding *pro se* by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). The district court recently adopted the undersigned's Findings and Recommendations to grant Defendants' motion to dismiss only to the extent Plaintiff seeks monetary damages against Defendants in their official capacities, but to deny the motion in all other respects. (Doc. No. 120).

Currently pending before the Court are the following motions filed by Plaintiff: (1) motion for reconsideration seeking reconsideration of the Court's order denying him appointment of counsel, filed on August 4, 2021 (Doc. No. 113); (2) motion for reconsideration of the Court's order denying his request "for intervention by the United States," filed on August 9, 2021 (Doc. No. 114); and, a 151-page motion entitled "reconsideration," incorporating a motion for an evidentiary hearing, but is otherwise unclear as to what order Plaintiff requests the Court to reconsider, filed on September 20, 2021. (Doc. No. 119). For the reasons below, Plaintiff's

1 motions are denied.

2 **A. Standard of Review under Fed. R. Civ. P. 60(b)**

3 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final judgment,  
4 orders, or proceedings of the district court. Rule 60(b) permits a district court to relieve a party  
5 from a final judgment, order, or proceedings on grounds of: “(1) mistake, inadvertence, surprise,  
6 or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud . . . of an adverse party; (4) the  
7 judgment is void; (5) the judgment has been satisfied . . . or (6) any other reason justifying relief  
8 from the operation of the judgment.” Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be  
9 made within a reasonable time, in any event “not more than one year after the judgment, order, or  
10 proceeding was entered or taken.” *Id.*

11 When filing a motion for reconsideration, Local Rule 230(j) requires a party to show the  
12 “new or different facts or circumstances claimed to exist which did not exist or were not shown  
13 upon such prior motion, or what other grounds exist for the motion.” Motions to reconsider are  
14 committed to the discretion of the trial court. *See Combs v. Nick Garin Trucking*, 825 F.2d 437,  
15 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (*en banc*). To succeed,  
16 a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its  
17 prior decision. *See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665  
18 (E.D. Cal. 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

19 **B. Plaintiff’s Reconsideration Motions**

20 In the first motion, Plaintiff states that the Court erroneously denied him appointment of  
21 counsel and decided that “due to lack of funds/compensation, it .... does not have to . . . refer and  
22 or appoint counsel for the limited scope and purpose of discovery Procedure and Process . . .”  
23 (Doc. No. 113 at 2). Plaintiff re-asserts that this hand injury makes him handicap and that he  
24 requires accommodation, or appointment of counsel, to prosecute his case. (*Id.*). Plaintiff  
25 further alleges he trades his meals to inmates so they assist him. (*Id.* at 3). Plaintiff incorporates  
26 within his motion medical notes dated July 9, 2021, reflecting Plaintiff fell and injured his right  
27 arm; “possible carpal tunnel syndrome”; “tone was normal”; “wrist and hand strength” was “4/5  
28 verses 5/5 on the left”; “no atrophy was noted.” (*Id.* at 9). Following an EMG test, the report

1 indicated “no evidence” of carpal tunnel on Plaintiff’s wrist. (*Id.* at 10).

2 In Plaintiff’s second motion, consisting of 88-pages, he again requests intervention of the  
3 United States, or the State, in the CDCR. (Doc. No. 114). Plaintiff motion re-alleges the facts at  
4 issue in his Complaint. (*Id.* at 4-5). And, finally, Plaintiff’s third motion, as noted above,  
5 consisting of over 100 pages, is unclear what order he seeks the Court to reconsider. (Doc. No.

6 **C. Analysis**

7 Here, Plaintiff does not satisfy the requirements of Rule 60(b) in any of his three reconsideration  
8 motions, because he does not present any new facts, circumstances, or law to justify  
9 reconsideration of the Court’s prior orders. Regarding the order denying Plaintiff’s motion to  
10 appoint of counsel, the Court never suggested a lack of funds to appoint counsel, but instead  
11 found no exceptional circumstances present. (*See* Doc. Nos. 106, 112). The Court noted Plaintiff  
12 appeared to be able to litigate his case. (Doc. No. 106 at 2-3). Plaintiff’s reconsideration motion  
13 raises the same facts before, *e.g.*, that his wrist condition precludes him from prosecuting his  
14 action, but this issue was previously raised and rejected. (Doc. No. 106 at 2-3). Incorporated  
15 within the motion for reconsideration is medical documentation further supporting the Court’s  
16 prior denial of counsel. (Doc. No. 113 at 9-10). Indeed, despite his complaints that he cannot  
17 write, Plaintiff continues to file prolific and lengthy motions.

18 Plaintiff’s other two reconsideration motions fare no better. Both are in excess of the page  
19 limitations for e-filing. The Court has previously warned Plaintiff about his prolific filing. (*See*  
20 Doc. No. 107). The Rule 60(b) standards “reflect[] district courts’ concern for preserving  
21 dwindling resources and promoting judicial efficiency.” *Arnold v. County of El Dorado*, 2012  
22 WL 2117678 \* 1 (E.D. Cal. 2012) (citations omitted). At most, Plaintiff merely rehashes the  
23 arguments he raised in previous motions that were rejected.

24 Further, to the extent Plaintiff requests an evidentiary hearing, his request is denied.  
25 There are no facts that require development at a hearing given the procedural posture of this case.  
26 Considering the district court recently adopted the undersigned’s findings and recommendations  
27 denying Defendants’ motion to dismiss, by separate order the court will stay the case and permit  
28 the parties an opportunity to participate in early alternative dispute resolution.

Accordingly, it is **ORDERED**:

1. Plaintiff's motions for reconsideration (Doc. Nos 113, 114, 119) are DENIED.

2. Plaintiff's motion for an evidentiary hearing (Doc. 119) is DENIED.

3. By separate order the Court will issue an order staying the case for purposes of permitting the parties to consider whether to engage in alternative dispute resolution.

Dated: September 22, 2021

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE